

Office Memorandum • UNITED STATES GOVERNMENT

TO : Files

25X1A

DATE: 23 June 1948

FROM : [REDACTED]

SUBJECT: Use of Appropriated Funds for Payment for Services of a Personal Nature

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1. The availability of current appropriations for the payment of salaries of mess personnel and the probably purchase of facilities for the use and benefit of [REDACTED] personnel assigned to areas outside the continental United States has informally been considered by this office.

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2. It may be stated as a general rule that the use of appropriated funds for objects not specifically set forth in the Appropriation Act is unauthorized unless it follows by necessary implication that the object not specified bears a direct connection with and is essential to the accomplishment of the purposes for which the funds were appropriated. (CG B-73234)

3. That the availability of appropriations for the purposes here concerned is unauthorized, in the absence of express stipulation, is clear from (i) decision of the Comptroller General, (ii) language of the current appropriations acts, (iii) the application of general prohibiting statutes.

a. In 13 CG 42, the extension of the officers' mess, Navy Department, from shipboard to shore, under compelling reasons, evoked the following comments from the Comptroller General:

"As hereinbefore stated, there is no law or legal regulation which recognizes officers' messes as of a public character, and the inhi-

hibition in question in the current appropriation act is intended to stop the practice of detailing enlisted men to prepare and serve food to officers' messes not recognized or authorized by law or legal regulation. If the officers are required or permitted to subsist themselves ashore, it is a private mess notwithstanding the officers may technically be on sea duty. Decision A-38907, December 1, 1931. The purpose of the inhibition on pay and allowances of enlisted men in the proviso in question, as shown in the legislative history and the status of the law then in force, is to prohibit the detail of enlisted men and civilians in naval service to perform for officers duty of a private or personal character as contrasted with public duty."

In the same decision, the Comptroller General, quoting from *Williams v. United States*, 44 Ct. Cls. 175, emphasized the difference between shipboard and voluntary messes, and the necessity of positive legislation in the matter:

"Section 1115 and 1120, Navy Regulations of 1900, as well as 1905, have reference only to officers' mess on board ship, and whatever practice may have grown up respecting the detail of enlisted men on shipboard to prepare and serve food to the officers thereof can have no application to officers' mess on shore, nor is there any law authorizing the regulation of officers' mess on shore. Officers on shore are at liberty to get their meals when and how they please, and if for economical reasons or otherwise unite in forming a mess on shore that is their own concern and no regulation respecting it other than that of their own making is required, and membership therein is entirely optional with them."

b. The use of appropriated funds for the furnishing of personnel and facilities for the operation of messes, all things being equal, does not flow by necessary implication, nor is it tenable on the basis of a specific appropriation justifying reasonable and necessary incidental

expenditures essential to the accomplishment thereof. Specific purpose language is not discoverable in the current appropriation which would warrant a characterization of the subject concerned as a reasonable and necessary incidental. Moreover, the fact that the work of the [REDACTED] has been carried on since its inception without such special services demonstrates that the proposed expenditures are not essentially requisite to the accomplishment of the statutory purposes of the appropriations available to CIA, and, obviously, were not within the general contemplation of such appropriations. Where Congress clearly intends that an appropriation shall be available for mess service and facilities, it does so by express language. A recent appropriation act serves further to confirm the principle that where benefits not strictly of a public nature are involved, the express authorization of Congress is required:

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"Public Law 592 - 80th Congress. Title I - Foreign Service Salaries and Expenses, F.S. * * * and the operation and maintenance of commissary and mess service (not to exceed \$200,000) without regard to section 3709 of the Revised Statutes, as amended; * * *"

"Public Law 573 - 80th Congress * * * (a) furnishing food and shelter, without repayment therefor, to employees of the Government assigned to Arctic stations; * * *"

4. Particularly in point is 20 CG 601 which involved a question raised by the Navy Department whereby it wished to make available the appropriation for "General Expenses, Marine

Corps", for expenditure for supplying necessary maid, cook, and personal services other than janitor services for the New Navy Nurses Quarters, Marine Barracks, Quantico, Va. In a letter to the Comptroller General, the Navy Department wrote:

" * * * The Appropriation "General Expenses, Marine Corps, for the current fiscal year, as contained in the Naval Appropriation Act, approved June 11, 1940, (Pub. No. 588), is in terms available "For * * * personal and other services, and for other incidental expenses for the Marine Corps not otherwise provided for."

"The old Navy nurses' quarters at the Marine Barracks, Quantico, Va., were small, consisting approximately of six rooms, whereas the new Navy Nurses Quarters at that place include a large living room, dining room, kitchen, basement, first and second floor corridors, and fourteen nurses' rooms. The nurses occupying the old nurses' quarters were furnished janitor services, but maid, cook, and personal services other than janitor were furnished by the nurses themselves. * * * "

5. Revised Statute, Section 1765, ~~24 Stat. 602~~, provides:

"No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefore explicitly states that it is for such additional pay, extra allowance, or compensation."

6. In applying this statute, the Comptroller General stated:

" * * * To provide at this time and without further authorization from the Congress, maid service, cooks, and other personal services (not otherwise described) in addition to the quarters would be in contravention of Section 1765, Revised Statutes. * * * "

7. Should the subject matter of this memoranda be raised informally, the above discussion would require that this office advise similarly.

8. This memorandum does not consider the Act of March 5, 1928, c. 126 S. 3, 45 Stat. 193, 5 U.S.C.A. Sect. 75 a., which provides that the head of an executive department may, in his judgment, on certain conditions, furnish civilians employed in the field service with quarters, heat, light, household equipment, subsistence, and laundry service, the reasonable value of such allowances to be determined and considered as part of the compensation in fixing the salary rate of such employees.